M

Secty. II-27—100,006—21-5-48.

Dev (1954) Department.

MS SERIES.

G.O. No. 1468

Dated 23 3 48

[Despatch Abstract.]

Acts - The Madras Shops and Establishment Act, 1947 - Holidays with pay under the Act - Interpretation - Papers - Recorded -

Copy of dated 29th Nov.1947 from the Secretary, The Madras Chamber of Commerce, Madras addressed to the Chief Secretary to Govt., Public (General-B) Deptt., Fort St. George, Madras.

URGENT.

Public holidays and holidays under the Shops Establishment Act, 1947.

My Chamber understands that provision has been made in the Shops and Establishments Act, 1947, for the grant of 36 annual holidays (12 days privilege, 12 days sick and 12 days casual leave) to all employees coming within the purview of the Act. My Chamber now desires to obtain clarification from Government on the question as to whether employees in commercial establishments and members of the clerical staffs of factories and industrial undertakings will be entitled to the public(festival) holidays declared by Government under the Negotiable Instruments Act in addition to all the leave holidays provided for in the Shops and Establishments Act.

As information on this point is very urgently required, I am to request that you will be good enough to send me a very early reply.

- - -

THE MADRAS CHAMBER OF COMMERCE.

***

DARE HOUSE,
First Line Beach,
Madras, 2nd December, 1947.

My dear Menon,

With reference to my interview this morning, I enclose a copy of a letter received from a constituent of the Chamber of Commerce which contains most of the points involved in the recent Shops and Establishments Act read with the Government's list of Negotiable Instruments Holidays for 1948.

I should be greatly obliged if you could let me have the answers to the queries raised in time for Chamber Firms to make their 1948 holiday arrangements before the end of the year.

Yours sincerely,

(Sd.) G.T.B.Harvey.

To
K.G.Menon, Esq.,
Joint Secretary to Govt.,
Development Department.
Fort St. George, Madras.

True Copy/

gs/2-9/

Holidays.

I give below a few comments supplementing the remarks Mr. Armstrong and I made at the Chamber meeting on the 25th instant.

1. The passing of the Madras Shops & Establishment Act brings the question of holidays under the Negotiable Instruments Act to a head.

2. Section 25(1) & (2) of the Act provided:-

'Holidays' with wages .....12 days per annum, which can be accumulated upto 24 day

'Casual Leave' " .....not exceeding 12 days per annum. (s

'Accident & Sick Leave' with wages .....not exceeding 12 days per annum.

3. Notes. (1) The total leave with wages which must be allowed if applied for, is 24 days with a possible, (I would say, 'probable') extension to 36 days including leave for accident and sickness.

(2) Note the words 'not exceeding' against 'casual' and 'accident and sick leave'

4. Section 50 reads as follows:

'Nothing contained in this Act shall affect any rights or privileges which any person employed in any establishment is entitled to, on the date on which this Act comes into operation in respect of such establishment, under any other law, contract, custom or usuage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

5. Points to be clarified:

1) Does Section 50 mean that where an employer has given more than 12 days 'casual' leave with wages in the past, he must continue to do so notwithstanding the words 'not exceeding' in Section 25? If so, the total number of leave with wages may well considerably exceed 36 days per annum in a number of firms.

2) Does Section 50 mean that:-

(a) Negotiable Instrument holidays given in the past must be continued in the future over and above the leave to be granted under Section 25 or does it mean that

(b) If the total leave with pay granted prior to the new Act and inclusive of Negotiable Instrument holidays was say 50, the future total must not fall below 50.

Note:- Madras Government have notified three statutory(apart from Sundays) and 20 Negotiable Instrument holidays for 1948 and we must assume another two or three will be added later for National holidays bringing the total to 26.

6. If the interpretation under para 5(a) above is correct, it means that many firms will be obliged to give 36 plus 26 = 62 paid holidays per annum.

7. If, however, the interpretation under para 5(b) is correct, it would mean that a firm giving 50 days paid holiday per annum prior to the Act would have to give at least 14(50 - 36) Negotiable Instrument Act holidays.

/P.T.O.

8. Central Government's ruling on the same point under the Factories 'holidays with pay' Act was in line with the interpretation under 5(a) above.

9. With 'production' the Country's prominent need, it is to my mind against the Country's interest that the number of paid holidays per annum should be so absurdly high as 62, and there is obviously a case to put before Government for a reduction in the number of Negotiable Instrument Act holidays.

10. As the Shops and Establishment Act may be expected to become law during 1948, we must act quickly so that the position is clarified before 31.12.47 and firms can announce the 'festival holidays' for 1948 in advance.

gs/2-9/

D.O.No.119342.P.III/47-2. Dated 22-12-1947.

My dear Uthenderama,

Please send Encd. 119342.PIII/47-1, dated 5th December 1947 regarding clarification of certain points in the Shops and Establishments bill asked for by the Madras Chamber of Commerce sent to you in original through bearer and oblige.

Yours sincerely,

(Sd.) xxxx,

To
Sri A. Uthemdaraman, B.A.,
Assistant Commr. of Labour,
Chepauk, Madras.

GOVERNMENT OF MADRAS
Development Department.
Letter No.119342.PIII/47-3.
***

From
K.G.Menon, Esq., M.B.E., I.C.S.,
Joint Secretary to Government,

To
G.T.B. Harvey, Esq., C.I.E.,
The Madras Chamber of Commerce,
Dare House, First Line Beach, MADRAS.

Fort St. George, dated 6th January 1948.

Sir,

Sub: THE Madras Shops and Establishments Bill - Holidays with pay -
Ref: Your letter dated 2-12-1947.

I am directed to inform you that under the Madras Shops and Establishments Bill, Commercial Establishments, shops etc. are bound to give 36 holidays with pay (12 days privileges leave, plus 12 days casual leave, plus 12 days sick leave) in addition to the weekly holidays but that if in any concern persons employed therein used to get more leave of the three categories specified above or of any other category, under any other law, contract, custom or usage, leave for such longer period should be given to them under clause 50 of the said Bill.

Your obedient servant,

(Sd) K.G.Menon,
Joint Secretary to Government.

gs/2-9/

***

GOVERNMENT OF MADRAS
Development Department
***

Lr.No.119342.PIII/47-3. Fort St. George,
6th January 1948.

To
G.T.B. Harvey, Esq., C.I.E.,
The Madras Chamber of Commerce,
Dare House, First Line Beach, Madras.

Sir,

Sub: The Madras Shops and Establishments Bill -
Holidays with pay -
Ref: Your letter dated 2-12-1947.

I am directed to inform you that under the Madras Shops and Establishments Bill, Commercial Establishments,Bill, Commercial Establishments, Shops etc. are bound to give 36 holidays with pay (12 days privilege leave, plus 12 days casual leave, plus 12 days sick leave.) in addition to the weekly holidays but that if in concern persons employed therein used to get more leave of the three categories specified above of any other category, under any other law such / contract, custom or usage, leave for/longer period should be given to them under clause 50 of the said Bill.

Your most obedient servant,

(Sd.) x x x

Copy to:
The Commissioner of Labour, Madras.

GOVERNMENT OF MADRAS
Development Department.
***

Post Copy of Telephonic Message dated 4-2-1948.

To
The Commissioner of Labour,
Chepauk, MADRAS.

Will you kindly meet th Mr. K.U. Menon, at your convenience, in his office?

/True Copy/

gs/2-9Ø

Copy of letter No.1.103/48, dated 23rd Jan, 1948 from the Secretary, The Southern Indian Chamber of Commerce, Madras addressed to the Secretary to the Government of Madras, Public(Political) Department, Fort St. George, MADRAS-9.

HOLIDAYS UNDER THE MADRAS SHOPS AND ESTABLISHMENTS ACT -1947.

...

The attention of this Chamber has been drawn by the Madras Chamber to the possible interpretation of Section 50 of the Madras Shops and Establishment Act 1947 by which the Negotiable Instruments Act Holidays that may be declared from year to year would be in addition to the 36 days prescribed under the Madras Shops and Establishment Act. It could not have been the intention of Government to give such a wide interpretation. The following words used in section 50 are significant:- "..if such rights or privileges are more favourable to him than those to which he would be entitled under this Act". It means that the two sets of rights or privileges are to be considered as alternative blocks. It would however be advisable for Government to consult their legal advisers and thereafter, if necessary, to narrow down the application of the section to 36 days including the Negotiable Instruments Act Holidays

--- XXxxxxxxxxxxxxxxxxxxxxxxxxxxxx

gs/2-9/

Copy of No.C.4.8967/47., dated 1-3-48 from the Commissioner of Labour, Chepauk, Madras addressed to the G Secretary to Govt., Development Deptt., Madras.

---

sub: Labour - The Madras Shops and Establishments Act, 1947 -

---

I enclose a copy of D.O. letter dated 18-2-48 from Mr. G.T.B. Harvey, C.I.E. of the Madras Chamber of Commerce Dare House, Madras requesting me for an interpretation of section 25(1) and (2) relating to holidays of the above Act.

A distinction has to be made on leave or holidays pay not related to particular days and holidays allowed by law or custom on particular days such as festival holidays and holidays under the Negotiable Instruments Act. If an employer grants leave with pay of various kinds for over 36 days in the aggregate exclusive of holidays related to particular days he may be allowed to split them up into 12 or more days privilege, 12 or more days casual leave and 12 or more days sick leave to suit his convenience keeping the total unaffected.

I request early orders of the Government as to whether I may inform the chamber on the above lines.

---

gs/-2-9/

Section 25(1) and (2) of the above Act relating to Holidays read with section 50, have given rise to certain doubts as to their total import. At the request of this Chamber I wish to ask if you will be good enough to give them the official interpretation, in order to clear certai important issues. The intention of section 25(1) and (2) of the Act is to guarantee to all regular employees within the definition, a total of 36 days full-pay leave in the year, viz. 12 'privilege', 12 'casual', and 12 'sick'. Section 50 rules that if any employee has by 'any other law, contract, custom or usage' previously enjo more than this number of full-pay leave days, he shall (e continue to enjoy them.

The Chamber's difficulty in interpreting the Act lies in (a) the fact that but few employers have in the past, differentiate between 'privilege', 'casual' and 'sick' leave, but have dealt only with 'holidays with pay', the total number of which in a year, vary from firm to firm an (b) that Government publish a separate list of Negotiable Instruments Act 'holidays', some at least of which employers have been in the habit of allowing their staff to treat as extra 'holidays with pay'.

There have been suggestions, therefore, that the Act might positively require employers to allow their staff not only the 36 days full pay leave statutory under the ne Act, but also the N.I.A. Holidays (amounting this year possibly to 26) where similar holidays had been previously allowed by 'custom or usage'.

In the effort to elucidate the point, I put up, by D.O., a concrete case to the Secretary to Government, Development Department for a decision as to whether, when a firm had 'by custom and usage' allowed employees 14 days leave with pay, and had also closed their offices on 16 separate N.I.A. holidays, making 'paid holidays' total 30 days in all, any further holidays could be claime under the Act except for 'upto 12 days sick leave'.

The Secretary to Government, Development Department, informs me that you, as Commissioner of Labour, are the interpreting authority, so the Chamber will be grateful if you can confirm that in the above instance (i.g.,) employees could claim only 6 more days in the year as full pay leave, bringing the total up to the Act's maximum figure of 36 days.

I suggested in my phone conversation with you to day that the above is the correct interpretation of section 25(1) and (2) read with section 50, but further, that in cases when employers have previously allowed, under any category, more than 36 holidays with pay in the year, they must continue to do so. I shall be grateful if in your reply you can confirm this as being correct.

(Sd.) x x x
for Commissioner of Labour.

gs/2-9/

Notes

DEV.DEPTT.

Sub: Bills - The Madras Shops and Establishments Bill, 1947 - Holidays under the Bill.
Ref: Letter from G.T.B. Harvey, dated 2-12-47.

TO A.S.

Please see the reference from the Madras Chamber o Commerce at pp.1-7 c.f. The Chamber wants clarification on the question whether employees coming within the purview of the proposed Shops and Establishments Act, will be entitled to the public festival holidays declared by the Govt., in addition to the privileges provided for in this Act. They also want clarification on the points raised in para 5 on p.5 c.f. As regards the first point, it is submitted that while examining an amendment to section 25(1) proposed by Sri R. Suryanarayana Rao in the Council, it was pointed out that the intention of the Govt., is that festival holidays which are already enjoyed by workers should be continued to give given by the employers irrespective of the holidays provided for in this Bill. Vide 'B' on p.2. of the sectional notes in the L.F. and B on p.12 of the Legislative Council proceedings at 'T'.

Point 5(1) on p.5 c.f.:- Section 50 entitles a worker to continue to get any privileges by any other law, contract of custom if they are more favourable to him than he is entitled to, under this Bill. Hence if any worker used to get more than 12 days casual leave with pay in the past then he must continue to get that much of casual leave in spite of this Bill.

Points 5(2)(a)&(b) on p.5 c.f.:- It seems that public holidays should be continued to be given in future in addition to the leave facilities available to the work under this Bill, if they are given in the past. (rs

A draft letter to Mr. Harvey is submitted below for approval. Legal Dept. may see before issue. They may be requested to return this file by this evening, if possible.

Specific provisions may be made regarding the holdiays in the rules.

(Sd.) xxx
23-12-49.

This was certainly not our intention 36 was the limit accepted in the legislature time will ruin industry and commerce if mere holidyare f prescribed. I suggest the should say which holidays should be public holidays for this purpose and leave it to management, to give ultimate holidays if members so desire. Such holidays should not exceed six days in a year.

(Sd.) xx
23-12.

Discussed with J.S. We may say that under this bill, Commercial establishments and shops are bound to give only 36 holidays with pay in addition to weekly holidays and that it is open to these concerns to grant other holidays with reference to Section 50. Please put up a draft reply on these lines which Public and Legal may see

(Sd.) xxx
23-12-49.

Draft subd. below. Pub.(Genl) and Legal may see before issue.

(Sd.) xxx
H.S. 23-12/

p.t.o.

Publ.(G.) (B).

May be perused and the file passed on to Legal

(Sd.) xxx
25-12p

Legal Deptt.

Seen in Legal. The alterations indicated in red ink on the draft may be made.

Dev.Deptt.

The draft letter may now issue.

(H.M.)Ind.).

xxxx

THE MADRAS CHAMBER OF COMMERCE.
***

Madras, 10th Jan.1948.
URGENT.

My dear Menon,

Your letter No.119342 PIII/47-3,
Sub: The Madras Shops and Establishments Bill - Holidays with pay.

I am obliged to you for the above letter but find from consultation with constituents that it is still capable of different interpretations.

If you could be kind enough to give an opinion on the following specific case I think the ground would finally be cleared, and I should be very grateful for an early answer.

The case is as follows -

Upto 1947 a firm has given its employees 14 days leave with pay, to be taken, at the option of the clerk, either at a stretch or one day at a time. In addition they have closed their office on 16 separate N.I.A. holidays, for festivals. The clerk therefore gets 30 days leave with pay in a year. Under the Shops Act, is this the total number of days leave with pay, which any clerk could take, except for 'up to 12 days sick leave.

Yours sincerely,

(Sd.) G.T.B.Harvey.

To
K.G.Menon, Esq., M.B.E., I.C.S.,
Joint Secretary to Government Fort St. George.

To A.S.

Attention is invited to this Deptts letter at p.11 c.f. of 'A' to the Chamber. In the particular case referred to by Mr. Harvey at 'R' above, it seems that the 14 days leave with pay referred to therein comprises both privateilege and casual leave. But under the provisions of the proposed Madras Shops and Establishments Act, a clerk in entitled to 12 days privilege leave 12 days casual leave. Hence the clerk referred to by Mr. Harvey will, it seems, be entitled 12 days privilege have leave plus 12 days casual leave plus 12 days sick leave plus 16 days festival holidays enjoyed by him under the Negotiable Instruments Act. Legal may see for remarks before a reply is sent.

(Sd.) xxxx
20-1-48.

I should like to speak to Legal Secyl at his convenience.

(Sd.)xxx
20-1
Legal. Secy.

P.T.O.

Legal Department.

Under the Madras Shops and Establishments Bill, commercial establishments, shops, etc. are bound to give to their employees 36 holidays with pay (that is, 12 days privilege leave plus 12 days casual leave plus 12 days sick leave) in addition to the weekly holidays- See clauses 16 and 25 of the Bill. Clause 50 provides that nothing contained in the Act shall affect any rights or privileges which the employees were entitled to under any other law, contract, custom or usage, if such rights or privileges are more favourable to them than those to which they would be entitled under the Act.

In the case referred to by the Chamber of Commerce, employees are getting(i) 14 days leave with pay, and (ii) 16 festival holidays. The 14 days leave with pay is apparetnly a combination of all kinds of leave, namely, privilege leave, casual leave and sick leave (or at least the first two kinds of leave). This may be verified. If this is so, as against 14 days leave hitherto enjoyed by the employees, they will thereafter get 36 days leave with pay under the Act. Clause 50 cannot be construed so as to enable an employee to enjoy the 14 days leave in addition to the 36 days conferred by the Act. The concluding portion of the clause, namely, "if such rights or privileges are more favourable to him thanthose to which he would be entitled under the Act" suggests that the employee is not to lose the benefit of any rights or privileges which were more advantageous to him before the Act came into force. If the leave to which he was previously entitled was less favourable to him,, that cannot be taken into account and it should be ignored. In other words, if an employee was previously enjoying 15 days casual leave, he will be entitled to the benefit of that 15 days in lieu of the 12 days casual leave given by the Act. But if he was previously enjoying only 10 days, he has no right to add the 10 days to the 12 days casual leave conferred by the Act. This seems to be the correct position and also a sounder view.

So far as the festival holidays are concenred, as the Act does not confer such holidays, the employees who were previously enjoying them will be entitled to the benefit of the festival holidays in addition to the other kinds of leave provided by the Act - if that is the established usage.

It may be noted here that under clause 51, if any question arises whether section 50 applies to any case or not, it shall be decided by the Commissioner of Labour and his decision thereon shall be final.

(Sd.) xxx

Development Department

TO.A.S.

Please see the remarks of the Secretary, Legal Dept. from p.2 ante. He has in effect agreed withthis Dept.'s view expressed at K' on p.2 ante. As regards the 14 days leave, it does not seem necessary to address the Chamber in the matter as suggested by Legal Secretary at 'B on p.3 ante. A mention of it may be made in the reply.

A draft reply to Mr. Harvey is submitted below for approval.

The draft letter may be approved.

(Sd.) xxx29-1-48.

gs/

T.S.

H.M. may see the draft. This was not my intention and I do not know if H.M. would agree with the interpretation. The position is that an employee will get leave for 36 days, 16 days holidays and a weekly holiday for 104 holidays in all. Such Legal provisions will never be honoured. I think the interpretation should be that instead of all types of leave or holidays put together they were getting before, they should get 36 days or such higher no. of days are they were enjoying before the Act. That would take us to more or less constant nos. of holidays every year.

I would add that as the C.of L is the interpreting authority under the cut, be may give the interpretation.

(Sd.) xxx
30-1 H.M. (Ind.)

J.S. may discuss this with me.

(Sd.) xxx
30-1

Discussed with J.S.:- C/L may be asked to give the interpretation after discussion with J.S.

(Sd.) xxx
2-2-48.

xxxx xxx xx

A draft endorsement to his the C. of L. is submitted below for approval.

(Sd.) xxx
20/2/48.

xx xx

TO A.S.

Please see the letter at p.9 c.f. from the C.of L. He preposes to inform the Chamber of Commerce as in para 2 on p.9 c.f. regarding the holidays under sec.25 of the Act and requests orders of Govt. in the matter. The Commr. of Labour is the deciding authority under the Act--Vide sec.51 efon p.16 of L. and it may not be proper for the Govt. to issue any instructions. The Commissioner may have to use his discretion in the matter.

It does not appear necessary for Government to give any instructions in the matter.

(Sd.) x x
10-3-'48.

---

x x

To A.S.

Please see the reminder from the Commr. of labour at p.15 c.f. to his letter at p.9 c.f. A reply has been sent to the Commr. on 11.3.48 in this Dept's Memo. at p.13 c.f. presumably it might have crossed the Commr's reference. No further action is pending in these papers. Hence this may be recorded in a G.O.(Ms.) to facilitate future reference.

(Sd.) xxx
23-3448.

ABSTRACT.

G.O.Ms.No.1469 dated 23-3-48.

Acts - The Madras Shops and Establishments Act, 1947 - Holidays with paymen under the Act - Interpretation - Papers Recorded -

Copy of letter dated 30th March, 1948 from the Secretary, The Madras Chamber of Commerce, Madras addressed to the Chief Secretary to Govt, Public(General-B) Department Fort St. George, Madras.

Public holidays and holidays under the Shops and Establishments Act, 1947

I invite your attention to my letter dated 29th November 1947 (copy attached for easy reference) and should be obliged if you would send me an early reply.

The Chief Secretary

GOVERNMENT OF MADRAS
Development Department
***

Lr.No.39607./III48, Fort St. George, D/19-4-1948.

To
The Secretary,
Madras Chamber of Commerce,
Dare House, First Line Beach, MADRAS.

Sir,

Sub: Madras Shops and Establishments Act, 1947 - Holidays under the Act -
Ref: Your letter dated 30-3-48.

I am directed to invite your attention to Government's letter No.119342.PIII/47-3 dated 6-1-1948 addressed to the Mr. G.T. B. Harvey and the to state that the Commissione of Labour may be addressed for any further clarification in the matter.

Your obedient servant,

(Sd.) xx x x
Secretary to Government.

/True Copy/

Office Assistant,
Madras Record Office.

gs/2-9/

99